
CHAPTER 42

PUBLIC ACCESS TO MICROFILMED RECORDS CONTAINING RESTRICTED CRIMINAL HISTORY INFORMATION

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Since July 1, 2012 various statutes have been in effect that allow Indiana courts to restrict or seal criminal court records from public access¹ causing a dilemma if court records have been microfilmed. Each microfilm roll/microfiche sheet may contain publicly accessible court records and restricted or sealed court records. If the public is permitted to have unfettered access to these records, the public could see the restricted criminal history information. However, if the public is denied access to these records, the public is prevented from examining records that are publicly accessible.

Under [Ind. Administrative Rule 9\(J\)](#), a court, court agency, or clerk of court employee who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for the disclosure. However, knowingly allowing public access to microfilmed records containing restricted criminal history information may compromise this immunity. An argument can also be made that the immunity contained in [Admin. R. 9\(J\)](#) applies only to court records declared confidential under [Rules 9\(G\)](#) and [9\(H\)](#) and may not apply to records restricted by the statutes mentioned above.

There are many ways in which clerks use microfilm and scanning systems, so a best practice with widespread application is difficult to recommend. The Division suggests establishment of a protocol, implemented by local rule, after a thorough discussion of the options and public comment. When a petition to restrict access to criminal history information is granted, the Division recommends determination of the location of the records from the sealed/restricted case. If it is in a microfilm storage box, mark the box as containing restricted court records with instructions to consult a supervisor to ensure access to the records is handled under the protocol established by the local rule. For scanned records, the scanning technology may make the solution simpler. If a petition to restrict access is granted, mark the file so that access is granted only under the protocol established by the local rule. While the Division welcomes feedback on the resolution of this dilemma, the optimal solution may ultimately be legislative.

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¹ [I.C. 35-38-9](#) (effective July 1, 2013) and I.C. 35-38-8 (effective July 1, 2012, repealed June 30, 2013)